

**United States Department of Labor
Employees' Compensation Appeals Board**

L.O., Appellant)	
)	
and)	Docket No. 23-0122
)	Issued: December 7, 2023
U.S. POSTAL SERVICE, LANCASTER POST)	
OFFICE, Lancaster, SC, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 3, 2022 appellant filed a timely appeal from a May 31, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of total disability commencing December 2, 2021 causally related to her accepted January 5, 2002 employment injury.

FACTUAL HISTORY

On January 8, 2002 appellant, then a 39-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on January 5, 2002 her postal vehicle was rear-ended

¹ 5 U.S.C. § 8101 *et seq.*

resulting in injuries to her neck, shoulder, left arm, and back while in the performance of duty. She stopped work on January 5, 2002 and returned to a series of light-duty positions beginning on February 12, 2002.² OWCP accepted the claim for sprains of the neck and back (lumbar region); displacement of lumbar intervertebral disc without myelopathy, herniated at T12-L1; and displacement of thoracic intervertebral disc without myelopathy, herniated at T12-L1. Appellant returned to a modified position as a full-time distribution clerk on August 3, 2010 and to a position as a modified distribution associate on February 20, 2013.³

In a note dated April 13, 2019, Dr. William L. Lehman, an orthopedic surgeon, described appellant's light-duty position due to residuals of the 2002 employment injury of thoracic disc herniation and chronic pain. He further reported that she was lifting tubs at work on March 21, 2019, heard a loud pop, and injured her back and neck. Dr. Lehman recounted that following this event appellant experienced repeated events of transitory numbness and tingling in both legs to both feet. He repeated her allegations that her light-duty restrictions were not reliably accommodated. Dr. Lehman performed a physical examination and diagnosed a work-related injury on March 21, 2019. He further diagnosed chronic thoracolumbar spine pain following the January 5, 2002 employment injury, chronic periscapular pain, chronic disc protrusion T12-L1 and T7-8, and thoracolumbar spondylosis and disc disease with a history of lumbar arachnoiditis. Dr. Lehman concluded that appellant's March 21, 2019 incident was under investigation and that it was unclear whether her current symptoms were an aggravation of the 2002 work injury or a new injury.

On October 3, 2021 Dr. Lehman examined appellant due to her January 5, 2002 employment injury. He also asserted that her accepted conditions were aggravated by a reinjury on March 21, 2019. Dr. Lehman again described the events of March 21, 2019 and recounted that appellant's light-duty work restrictions were not reliably accommodated as she was extremely busy due to understaffing, worked 10-hour days, and stood at the service window for at least 6 hours a day. He diagnosed prolapse of thoracic intervertebral disc without radiculopathy, chronic thoracolumbar spine pain following the January 5, 2020 employment injury, chronic T7-8 herniation, chronic disc protrusion T12-L1 and T7-8, thoracolumbar spondylosis, and disc disease.

In October 20 and December 31, 2021 notes, Dr. Lehman reviewed an October 15, 2021 MRI scan which demonstrated disc protrusion at T7-8 and T12-L1 and an annular tear at T11-L1 that had not substantially changed from previous evaluations. He described the March 21, 2019 lifting incident and recounted that appellant continued to experience occasional numbness and tingling in both legs. Dr. Lehman found that she was unable to continue working after December 2,

² OWCP assigned the present claim OWCP File No. xxxxxx760. The Board notes that appellant filed a second Form CA-1 dated December 2, 2021 alleging that on October 1, 2021 she was working overtime and beyond her work restrictions which caused new disc bulges in her neck and thoracic spine. OWCP assigned this claim OWCP File No. xxxxxx855, developed it as an occupational disease, and denied it by decision dated January 10, 2022, finding that appellant failed to submit medical evidence of an additionally diagnosed condition. It administratively combined appellant's claims, with OWCP File No. xxxxxx760 designated as the master file.

³ On July 23, 2010 the employing establishment noted that appellant's work restrictions were intermittent lifting of up to 15 pounds for three hours a day, sitting/standing/walking intermittently for four hours a day, bending/stooping/twisting intermittently for two hours a day, reaching above the shoulder intermittently two hours a day, and performing fine manipulation/simple grasping intermittently for eight hours a day.

2021 due to pain with burning in her feet and tingling in her legs. He diagnosed thoracic degenerative disc disease, thoracic spondylosis with myelopathy, a January 5, 2002 work-related injury of the thoracic spine which was aggravated by an injury of March 21, 2019, and prolapse of the thoracic intervertebral disc without radiculopathy. Dr. Lehman found that appellant was unable to perform her usual work activities and recommended sedentary work with no tasks requiring significant repetition or dexterity.

In a report dated November 3, 2021, Dr. Adewunmi A. Akande, a Board-certified anesthesiologist, recounted appellant's symptoms of low back pain. He found that diagnostic studies demonstrated herniated discs and facet arthropathy at T12-L1 and L1-2. Dr. Akande noted that appellant was performing light-duty work. He diagnosed lumbar spondylosis and lumbar degenerative disc disease. On December 1, 2021 Dr. Akande found that appellant's low back pain had improved.

On December 2, 2021 appellant stopped work.

Dr. Akande completed notes from December 29, 2021 through April 20, 2022 recounting that appellant's low back pain had improved. He noted on December 29, 2021 that she had recently stopped work at the employing establishment "and now had her disability completed." Dr. Akande diagnosed lumbar spondylosis, lumbar degenerative disc disease, myofascial pain, cervical herniated and degenerated disc and spondylosis without myelopathy, and radiculitis.

On April 26, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work for the period April 11 through 22, 2022.

In an April 28, 2022 development letter, OWCP notified appellant of the deficiencies of her recurrence claim. It advised her of the type of medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence.

Appellant continued to file CA-7 forms claiming compensation for disability from work.

OWCP received October 15, 2021 and January 28, 2022 MRI scans of the thoracic spine which demonstrated disc bulges at T7-11, central annular tear at T11-12, and left central disc protrusion at T12-L1.

On May 7, 2022 Dr. Lehman related that appellant had sustained "severe and permanent disability since [her] work-related injury on January 5, 2002." He noted that she also sustained an injury on March 21, 2019. Dr. Lehman opined that appellant was unable to work due to severe pain with burning in her feet and tingling in her legs. He noted that she had stopped work on December 2, 2021, that she experienced bowel and bladder dysfunction, and that her gait had been adversely affected. Dr. Lehman opined that appellant was totally disabled due to work-related injuries including thoracic spondylosis with myelopathy, prolapse of thoracic intervertebral disc without radiculopathy, chronic T7-8 herniation, chronic disc protrusion T12-L1, and T7-8, and thoracolumbar spondylosis and disc disease with a history of lumbar arachnoiditis. He further opined that the accepted January 5, 2002 employment injury was aggravated by the March 22, 2019 incident. Dr. Lehman determined that OWCP was unwilling to accept his reports and requested a second opinion evaluation.

On May 9, 2022 appellant filed a notice of recurrence (Form CA-2a) claiming that on November 11, 2021 she sustained a recurrence of her January 5, 2002 medical conditions and that she sustained a resulting recurrence of total disability on December 2, 2021. She described her work restrictions following the January 5, 2002 employment injury including limitations on sitting, standing, and lifting more than 10 pounds. Appellant alleged that she was required to work beyond her limitations and recounted the March 21, 2019 lifting incident alleging aggravation of her underlying conditions. She further asserted that she had developed a consequential kidney condition as a result of medication prescribed for the January 5, 2002 employment injury.

In a May 18, 2022 statement, appellant asserted that by December 2, 2021 she could no longer stand or sit for any productive time. She alleged that her work activities had exceeded her restrictions for 5 years as she worked more than 50 hours a week, stood up to 8 hours, and lifted and pushed more than 10 pounds. Appellant further alleged that she had developed work-related spondylosis, arthritis, a new annular tear at T11-12, incontinence from her herniated disc at T12-L1, and chronic kidney disease.

In a May 18, 2022 note, Dr. Akande recounted that appellant's neck pain had worsened. He diagnosed chronic prescription opiate use, lumbar spondylosis, lumbar degenerative disc disease, myofascial pain, cervical spondylosis without myelopathy, and cervical herniated disc without myelopathy or radiculitis.

By decision dated May 31, 2022, OWCP found that appellant had not established a recurrence of disability commencing December 2, 2021 causally related to her accepted January 5, 2002 employment injury. It noted that its decision did not affect her entitlement to medical benefits for her accepted employment-related conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁶ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁷ Whether a particular injury causes an employee to become disabled from

⁴ *Supra* note 1.

⁵ *See S.P.*, Docket No. 21-0380 (issued November 22, 2022); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

⁷ *See R.H.*, Docket No. 21-0717 (issued June 12, 2023); *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁸

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition that had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. The term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to the work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁹

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden of proof to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty requirements.¹⁰

An employee who claims a recurrence of disability resulting from an accepted employment injury has the burden of proof to establish that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability commencing December 2, 2021, causally related to her accepted January 5, 2002 employment injury.

Appellant submitted a series of reports from Dr. Lehman dated April 13, 2019 through May 7, 2022 in which he recounted that she was lifting tubs at work on March 21, 2019, heard a loud pop, and injured her back and neck. Dr. Lehman diagnosed chronic thoracolumbar spine pain following the January 5, 2002 employment injury, chronic periscapular pain, chronic disc protrusion T12-L1 and T7-8, and thoracolumbar spondylosis and disc disease with history of lumbar arachnoiditis. He asserted that appellant's back conditions were aggravated by a reinjury on March 21, 2019. Dr. Lehman found that she was unable to continue working after December 2,

⁸ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

⁹ 20 C.F.R. § 10.5(x); *see G.S.*, Docket No. 23-0056 (issued July 3, 2023); *D.T.*, Docket No. 19-1064 (issued February 20, 2020).

¹⁰ *S.P.*, *supra* note 5; *C.B.*, Docket No. 19-0464 (issued May 22, 2020); *see R.N.*, Docket No. 19-1685 (issued February 26, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹¹ *Id.*

2021 due to pain with burning in her feet and tingling in her legs. He maintained that appellant's work-related conditions prevented her from working.

The Board finds, however, that Dr. Lehman's reports are of limited probative value because he did not provide adequate medical rationale in support of his opinion on causal relationship. He did not sufficiently address how the January 5, 2002 employment injury would have been competent to cause a recurrence of disability on or after December 2, 2021. Dr. Lehman failed to explain why appellant's work stoppage on December 2, 2021 was due to a spontaneous recurrence of the January 5, 2002 employment injury, rather than due to the sustaining of a new work injury on March 21, 2019. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/level of disability has an employment-related cause.¹² For these reasons, Dr. Lehman's reports are insufficient to establish appellant's recurrence of disability claim.

Appellant also submitted a series of reports dated November 3, 2021 through May 18, 2022, from Dr. Akande, however, these reports failed to address causation or disability from employment. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹³

As the medical evidence of record is insufficient to establish a recurrence of disability on or after December 2, 2021 causally related to her accepted January 5, 2002 employment injury, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing December 2, 2021, causally related to her accepted January 5, 2002 employment injury.

¹² See *H.C.*, Docket No. 22-0844 (issued December 5, 2022); *J.S.*, Docket No. 18-0944 (issued November 20, 2018).

¹³ *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.O.*, Docket No. 19-0953 (issued October 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board